

46 Am. Jur. 2d Judges § 177

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Judges

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IX. Disqualification to Act in Particular Case

C. Remedies and Procedure

3. Motion for Disqualification and Affidavit

a. In General

§ 177. Allegations and necessity for setting forth grounds for disqualification of judge—Where judge is witness

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(3)

A judge who is a material witness should self-disqualify,¹ but any such claim must be in good faith and be based on fact.²

A mere statement that the trial judge is disqualified as a material witness is insufficient in itself; rather, the petition must state the basis for the disqualification and the moving party must establish that the proposed testimony would be material.³

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Footnotes

- 1 § 165.
- 2 *People v. Rodriguez*, 14 A.D.2d 917, 221 N.Y.S.2d 532 (2d Dep't 1961).
- 3 *State ex rel. Ferrera v. Sandler*, 152 Fla. 517, 12 So. 2d 298 (1943); *State ex rel. Smith v. Wilcoxon*, 1957 OK CR 51, 312 P.2d 187 (Okla. Crim. App. 1957).

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